

Docket No: 02-0160
Bench Date: 2/27/02
Deadline: 2/28/02

MEMORANDUM

TO: The Commission

FROM: Leslie Haynes, Administrative Law Judge

DATE: February 26, 2002

SUBJECT: Z-Tel Communications, Inc.
-vs-
Illinois Bell Telephone Company (Ameritech Illinois)

Verified Complaint and Request for Emergency Relief
Pursuant to Sections 13-514, 13-515 and 13-516 of the
Illinois Public Utilities Act.

RECOMMENDATION: Enter the attached Order granting the request for
emergency relief as modified.

On February 21, 2002, Z-Tel Communications, Inc. ("Z-Tel") filed a verified Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") pursuant to Sections 13-514, 13-515 and 13-516 of the Public Utilities Act ("Act"). In its Complaint, Z-Tel alleges that Ameritech provides untimely, inaccurate, unreliable and discriminatory notice to Z-Tel when a Z-Tel customer migrates to an alternative local exchange carrier. This notice is referred to as "Line Loss Notification." Z-Tel alleges that this lack of reliable Line Loss Notification is a per se impediment to competition in violation of the Act, as well as a breach of the Interconnection Agreement between Z-Tel and Ameritech.

Included in the Complaint was a request for emergency relief pursuant to Section 13-515(e). Z-Tel requests that the Commission enter an Order granting it emergency relief in the form of prohibiting Ameritech from marketing its Winback promotional offers to Z-Tel customers until such time that Ameritech provides identical Line Loss Notification to Z-Tel that it provides to itself. Z-Tel alleges that Ameritech uses more favorable Operations Support Systems ("OSS") information, and more specifically Line Loss Notification, to trigger a Winback promotional offering to customers that have left Ameritech and subscribed to Z-Tel's local service offering. Z-Tel requests, because of the competitive advantage Ameritech gains through the defective and discriminatory Line Loss Notification, that the emergency relief be granted.

Ameritech filed its Response to the Petition for Emergency Relief on February 25, 2002. In that filing, Ameritech argues that the requested relief is overly broad and results in an infringement on its First Amendment rights. Ameritech also asserts that blocking Ameritech's Winback marketing is beyond the scope of the relief allowed under Section 13-515 and results in giving Z-Tel a competitive advantage. Prohibiting Ameritech from marketing, through the use of its Winback materials, does nothing, Ameritech argues, to correct the underlying problem with Line Loss Notifications.

In a request for emergency relief under Section 13-3515(e), a party must show that it will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if the emergency relief is not granted, and that the order is in the public interest. Z-Tel has met its burden in showing that some form of emergency relief should be granted. Ameritech has admitted that there are problems in its systems in providing timely, accurate Line Loss Notifications, although it argues that it has committed resources to addressing the problem. Z-Tel, however, is in the interim, suffering irreparable harm in the form of lost customers and damage to its reputation. Finally, the public interest is best served by promoting competition.

The emergency relief granted in the attached Order prohibits Ameritech from using Line Loss Notifications for marketing purposes, for 15 days, after it loses a customer to Z-Tel. This will level the competitive playing field and further the public interest. Therefore, I recommend that the Commission enter the attached Order which grants a modified form of the emergency relief sought by Z-Tel. Any remaining issues will be more completely addressed by the parties in the evidentiary phase of this matter. Based on this, the Commission will have a more fully developed record with regard to the allegations contained in this Complaint.

LH:jt